IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROGER D. CROWE

and DIANNA CROWE

Plaintiffs,

v.

1:05CV00761

BRAXTON TIRE COMPANY,

Defendant.

MEMORANDUM

OSTEEN, District Judge

On October 5, 2005, the Defendant Braxton Tire Company moved to bifurcate this matter at trial. For cause Defendant contends that for purposes of convenience, expedition, economy, and to avoid prejudice the bifurcation should be granted in this personal injury proceeding in which Plaintiffs Roger D. Crowe and Dianna Crowe seek compensatory damages and punitive damages. The Plaintiffs did not respond to the motion in a timely or untimely manner.

Under LR7.3(k), the failure to timely respond to a motion allows the motion to be considered as uncontested and ordinarily will be granted. Thus, the court will proceed with the understanding that Plaintiffs do not object to the motion.

However, the court has an independent duty to consider

convenience, economy, expedition, and prejudice. The court is not able to find that economy, convenience, and expedition would be promoted by bifurcation. Nevertheless, the court finds that under some circumstances the potential for prejudice is substantial in the proceeding seeking compensatory and punitive damages.

For that reason, the court will further consider the motion to bifurcate at the time of jury selection on April 2, 2007, absent further request for consideration by the parties prior to that date.

This the 9th day of February 2007.

nited States District Judge